

Assembly Bill No. 2818

Passed the Assembly August 22, 2000

Chief Clerk of the Assembly

Passed the Senate August 18, 2000

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2000, at _____ o'clock ____M.

Private Secretary of the Governor

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CHAPTER _____

An act to amend Sections 13304, 13402, 13404, 13405, 13550, 13563, 16760, and 16870 of, and to repeal Sections 13551 and 16871 of, the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2818, Corbett. Estate tax.

Existing law prohibits the imposition of any tax on or by reason of any transfer occurring by reason of death, but imposes a California estate tax equal to a certain portion of the maximum allowable amount of credit for state death taxes allowable under the applicable federal estate tax law.

This bill would, for purposes of those provisions, revise the definitions of transfer, and decedent or transferor. This bill would also revise the applicable interest payable on delinquent amounts or overpayments of tax.

The bill would make related and clarifying changes.

This bill would state the intent of the Legislature in enacting these provisions and that the bill is declaratory of existing law.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) It is and always has been the intent of the Legislature in enacting the California Estate Tax Law (Chapters 327 and 1535 of the Statutes of 1982), to implement the intent of Section 13302 of the Revenue and Taxation Code (adopted by Proposition 6, Initiative Statute, June 8, 1982) that California be entitled to collect the maximum allowable amount of the credit for state



death taxes, allowable under the federal estate tax law, that is attributable to property located in California.

(b) Despite this requirement, an appellate court decision has held that, under California property law, certain transfers included in a decedent's gross estate under the federal estate tax law are not subject to tax under the California Estate Tax Law because the decedent under California law was not the owner.

(c) The Legislature expressly declares that this appellate court decision is contrary to the Legislature's intent, and the amendments made by this act are intended to clarify what the Legislature declares was and continues to be the law.

SEC. 2. Section 13304 of the Revenue and Taxation Code is amended to read:

13304. In a case where the gross estate of a decedent includes property having a situs in this state, and includes other property having a situs in another state, or other states, the portion of the maximum state death tax credit allowable against the federal estate tax on the total estate by the federal estate tax law that is attributable to the property having a situs in California shall be determined in the following manner:

(a) For the purpose of apportioning the maximum state death tax credit, the gross value of the property shall be that value finally determined for federal estate tax purposes.

(b) The maximum state death tax credit allowable shall be multiplied by the percentage which the gross value of property having a situs in California bears to the gross value of the entire estate subject to federal estate tax.

(c) The product determined pursuant to subdivision (b) shall be the portion of the maximum state death tax credit allowable that is attributable to property having a situs in California.

SEC. 3. Section 13402 of the Revenue and Taxation Code is amended to read:

13402. "Estate" or "property" means the real or personal property or interest therein included in the

gross estate of a decedent or transferor, and includes all of the following:

(a) All intangible personal property included in the gross estate of a resident decedent within or without the state or subject to the jurisdiction thereof.

(b) All intangible personal property in California included in the gross estate of a nonresident decedent of the United States, including all stock of a corporation organized under the laws of California or which has its principal place of business or does the major part of its business in California or of a federal corporation or national bank which has its principal place of business or does the major part of its business in California, excluding, however, savings accounts in savings and loan associations operating under the authority of the Division of Savings and Loan or the Federal Home Loan Bank board and bank deposits, unless those deposits are held and used in connection with a business conducted or operated, in whole or in part, in California.

SEC. 4. Section 13404 of the Revenue and Taxation Code is amended to read:

13404. “Transfer” means the inclusion of any property or other interest included in the gross estate of a decedent.

SEC. 5. Section 13405 of the Revenue and Taxation Code is amended to read:

13405. “Decedent” or “transferor” means any person whose death gives rise to a transfer.

SEC. 6. Section 13550 of the Revenue and Taxation Code is amended to read:

13550. (a) The tax imposed by this part does not bear interest if it is paid prior to the date on which it otherwise becomes delinquent. However, if the tax is paid after that date, the tax bears interest at the rate for underpayment of estate tax provided in Section 6621(a)(2) of the Internal Revenue Code from the date it became delinquent and until it is paid. Interest under this section shall be compounded daily.

(b) The amendments made by Chapter 323 of the Statutes of 1998 shall apply to delinquent amounts unpaid



on or after January 1, 1999, to December 31, 2000, inclusive.

SEC. 6.5. Section 13551 of the Revenue and Taxation Code is repealed.

SEC. 7. Section 13563 of the Revenue and Taxation Code is amended to read:

13563. Interest shall be allowed and paid upon any overpayment of tax due under this part in the same manner as provided in Sections 6621(a)(1) and 6622 of the Internal Revenue Code.

SEC. 8. Section 16760 of the Revenue and Taxation Code is amended to read:

16760. If the tax is not paid before it becomes delinquent, it bears interest thereafter and until it is paid at the same rate per annum as provided in Section 6621(a)(2) of the Internal Revenue Code, compounded daily.

SEC. 9. Section 16870 of the Revenue and Taxation Code is amended to read:

16870. Interest shall be allowed and paid upon any overpayment of tax due under this part in the same manner as provided in Section 6621(a)(1) and 6622 of the Internal Revenue Code.

SEC. 10. Section 16871 of the Revenue and Taxation Code is repealed.

SEC. 11. The amendments made by Sections 6 to 10, inclusive, of this act become operative on January 1, 2001, and apply to interest accrual periods beginning on or after January 1, 2001.

SEC. 12. Interest shall not be assessed under Section 13550 of the Revenue and Taxation Code upon that portion of the death tax credit paid by a taxpayer to the Internal Revenue Service prior to the enactment of this act because of that taxpayer's reliance upon the holding in the appellate court decision described in subdivision (b) of Section 1 of this act, that becomes payable to the State of California. This section shall be operative until January 1, 2002.

SEC. 13. This act is an urgency statute necessary for the immediate preservation of the public peace, health,



or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide that certain transfers included in a decedent's gross estate under the federal estate tax law are subject to tax under the California Estate Tax Law and thereby end the loss of revenue to the state at the earliest possible time and to revise applicable interest rates at the earliest possible time, it is necessary that this act take effect immediately.



Approved _____, 2000

Governor

